IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 26.07.2007

Coram :

THE HONOURABLE MR.JUSTICE K.RAVIRAJA PANDIAN

and

THE HONOURABLE MR.JUSTICE P.P.S.JANARTHANA RAJA

Writ Appeal No.1332 of 2003

A.Chinnasamy ... Appellant

v.

1.The Secretary
Regional Transport Authority
Trichy

2.The State Transport Appellate
Tribunal, High Court Buildings
Chennai - 104

3.The State of Tamilnadu
rep.by its Secretary
Home (Transport) Department
Fort St.George, Chennai - 9. ... Respondent

Writ Appeal filed under clause 15 of the Letters Patent against the order dated 7.3.2003 made in writ petition No.21349 of 1994.

WP NO. 21349 of 1994 presented to this Court under article 226 of the Constitution of India to issue a writ of certiorari calling for the records relating to the order of the State Transport Appellate Tribunal, Madras dated 05.02.1994 made in Appeal No. 85 of 1984 confirming the order of the first respondent made in C.No. 8911/A3/84 dated 20.02.1984 and quash the same.

For Appellant : Mr.K.Alagirisamy,Sr.Counsel for
Mr.N.Gopalakrishnan

For Respondent : Mr.P.Subramanian,G.A.

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JUDGMENT

(Judgment of the Court was delivered by
K.RAVIRAJA PANDIAN, J.)

The writ appeal is filed against the order dated 7.3.2003 passed by the learned single Judge in W.P.No.21349 of 1994.

2. The point for consideration in this writ appeal is, whether the renewal application made by the appellant herein under Section 58(2) of the repealed Motor Vehicles Act, 1939, (hereinafter referred to as "the old Act") with a delay of 27 days can be directed to be considered under Section 81 of the new Act i.e., Motor Vehicles Act, 1988 (hereinafter referred to as "the new Act") at this point of time?.

3. The facts giving raise to the filing of the present writ appeal are as follows:

One N.S.Rajasekaran was the holder of stage carriage permit for the route M.G.Gate to Kavalkarapatty via Tennur, Puthur, Samarasampatti, Thayanur and R.T.Malai, issued by the Regional Transport Authority, Tiruchirapalli. The permit of the vehicle expired by 5.5.1984 when the repealed Motor Vehicles Act, 1939 was in force.

Under the provisions of Section 58 of the old Act, the application for renewal of permit should be made 120 days prior to the date of expiry of the permit. The Regional Transport Authority had power to entertain the application with a delay of fifteen days. As the permit holder - N.S.Rajasekaran was ill during the relevant period, he could not file the application for renewal of permit within the prescribed period under Section 58 of 1939 Act and the application was filed on 2.2.1984 with the delay of 27 days, which is admittedly beyond the condonable further period of fifteen days. The Secretary to the Regional Transport Authority rejected the application by his proceedings in C.No.8911/A3/84 dated 20.2.1984 holding that the application for renewal was not entertainable due to the delay. The permit holder preferred a statutory appeal in appeal No.85 of 1984 under Section 64 of the 1939 Act before the State Transport Appellate Tribunal, Madras. The Tribunal dismissed the appeal confirming the order of the lower authority by its order dated 5.12.1994. Aggrieved by the order of the appellate Tribunal, the petitioner filed writ petition in W.P.No.21349 of 1994 seeking for the relief of issuance of writ of certiorari in the nature of writ to quash the order of the State Transport Appellate Tribunal dated 5.12.1994 made in Appeal No.85 of 1984. While the writ petition was pending, the appellant filed an application to substitute him in the place of the original permit holder - writ petitioner N.S.Rajasekaran and the same was ordered by this Court by its order dated 19.11.2002 made in W.P.M.P.NO.60740 of 2002. The said writ petition came to be

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dismissed by reason of the impugned order dated 7.3.2003 made in W.P.No.21349 of 1994. The correctness of the said order is assailed in this appeal.

4. Mr.Alagirisamy, learned Senior Counsel appearing for the appellant contended that Section 58(2)(a) of the Motor Vehicles Act 1939, was amended by Act No.56 of 1969, whereby the application for renewal of stage carriage permit was required to be made 120 days instead of 60 days prior to the date of expiry of permit period. The said provision was challenged before this Court. Ultimately, the Supreme Court in the Transferred case (C) No. 82 of 1984, etc., batch dated 13.7.1993 permitted the persons like the petitioner to move under 1988 Act before the authorities concerned. The said order was passed by the Supreme court by taking note of the fact that the 1939 Act has been repealed by Motor Vehicles Act, 1988 and without going into the controversy, the said observation was made by the Supreme Court. Even prior to the order of the Supreme Court, this Court by its order dated 8.10.1990 made in a writ petition in W.P.No.8305 of 1982, wherein Section 58(2)(a) of the Motor Vehicles Act, 1939 was challenged, has observed that though writ petition was filed for declaration of the above said provision as ultra vires, that point did not survive for consideration because of the repeal of the said Act, but on finding that the petitioner therein was running the vehicle under a valid permit, the petitioner therein was permitted to file an application for renewal of the permit with a further direction that as and when the petitioner filed an application, the same should be disposed of on merits without reference to Section 58(2)(a) of the Act. He further contended that this Court by another order dated 6.11.1990 made in a writ petition in W.P.No.1589 of 1982 seeking for a writ of mandamus directing the Transport authorities to consider the renewal application of the petitioner therein, without reference to the amended provisions of Section 58(2)(a) of the Motor Vehicles Act, 1939, disposed of the writ petition by observing that when that writ petition was filed, the Motor Vehicles Act, 1939 was in force, that Act had since been repealed by the Motor Vehicles Act, 1988, which provides that an application for renewal should be made fifteen days before the expiry of the permit. Having regard to the liberalised provisions under the new Act, and also on the fact that the petitioner therein had obtained interim order and on the strength of which he had been operating the stage carriage, directed the authorities under the Motor Vehicles Act to restore the application made by the petitioner for renewal of the permit and treat it as one filed under the provisions of the new Act and further observed that till orders are passed as stated above, status quo was directed to be maintained.

5. Learned Senior Counsel for the appellant further submits that yet another order was passed by this Court on 26.9.2001 in W.P.No.14014 of 1995 to the same effect. Another order also has been passed on the same lines in W.P.NO.18516 of

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1990 dated 5.11.1998. However, the Tribunal has non-suited the petitioner for the said relief on technicalities and that was re-affirmed by the learned single Judge in the impugned order. He also relied on a Division Bench judgment of this Court in the case of TMT.SUGANTHI, PROPRIETOR, VEERAPPA TRANSPORT, TINDIVANAM VS. M.PALANIVELU AND ANOTHER reported in 2006 WRIT LAW REPORTER 858 to support his contention.

6. However, the learned Government Advocate appearing for the respondent submitted that having regard to the amended provision, which was obtaining during the relevant period, and having taken note of the Division Bench judgment made in W.A.No.675 of 1982, wherein the Division Bench of this Court followed the decision of the Supreme Court in SECRETARY, QUILON DISTRICT MOTOR TRANSPORT WORKERS' COOPERATIVE SOCIETY LIMITED VS. REGIONAL TRANSPORT AUTHORITY AND OTHERS (JUDGMENT TODAY 1994(5) SC 426), in which it was held that the grantee of the permits under old Motor Vehicles Act, 1939 was not entitled to any renewal beyond the expiry of the period of duration for which the renewal had been granted under the repealed Act, except by means of grant to be made on an application for fresh grant under the new Motor Vehicles Act. The appellant made an application for renewal of permit in respect of his stage carriage for further period of five years from 5.5.1984 with a delay of 27 days. Even the belated application was entertained and the renewal for the said period was granted, it would have expired by the year 1989 itself and by holding so, the Tribunal rejected the request of the appellant on the ground that the application made by the petitioner with a delay of 27 days under the old Act in the year 1984 cannot be considered under the provisions of the 1988 Act. The learned single Judge having found no irregularity and by giving reason that the earlier order passed by the learned single judge was made without assigning any reason, has dismissed the writ petition, which requires no re-consideration in the appeal.

7. We heard the argument of the learned counsel on either side and perused the materials on record.

8. It is an admitted fact that the appellant had applied for renewal of permit in respect of the route bus bearing Registration No. MDG 2449 for a further period of five years from 5.5.1984. There is also no controversy about the statutory provision, which was obtaining then that under Section 58(2) of the 1939 Act, an application for renewal of the stage carriage permit had to be made 120 days prior to the date of its expiry. Sub-clause (3) of Section 58 of 1939 Act empowered the Regional Transport Authority to entertain an application, which has been filed with a delay, however, not exceeding fifteen days. In this case, admittedly the appellant filed an application for renewal on 2.2.1984 with a delay of 27 days, which is not only beyond the time limit fixed under Section 58(2), but also beyond the extended time fixed under section 58(3) with a delay of 27 days.

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9. No doubt, as submitted by the learned Senior Counsel appearing for the petitioner, this Court in W.P.Nos.8305 of 1982 and 1582 of 1982 by orders dated 6.11.1990 and 13.11.1990 respectively, directed the authorities to consider the renewal applications of the respective petitioners therein without reference to Section 58(2)(a) of the 1939 Act. It is equally true that the Supreme Court in Transferred Case (C) No.82 of 1984 along with other cases, wherein Section 58(2)(a) of the 1939 Act was challenged, had observed that the 1939 Act has been repealed by 1988 Act, which was holding the field as on date, however, observed that it was open to the petitioners to raise any point available to them under the 1988 Act before the authorities under the Act. Likewise, the same relief was granted in the order dated 5.11.1998 made in W.P.No.18516 of 1990 by following the earlier order dated 8.10.1990 made in W.P.No.8305 of 1982. Those orders were also followed by the Appellate Tribunal in its orders.

10. It is a fact that the subsequent order of the Division Bench made in W.A.No.675 of 1982, which followed the decision of the Supreme Court in SECRETARY, QUILON DISTRICT MOTOR TRANSPORT WORKERS' COOPERATIVE SOCIETY LIMITED VS. REGIONAL TRANSPORT AUTHORITY AND OTHERS (JUDGMENT TODAY 1994(5) SC 426), was not available, when the above referred orders were passed. The judgment in W.A.No.675 of 1982 and that of the Supreme Court reported in JUDGMENT TODAY 1994(5) SC 426 have clearly held that after the repeal of 1939 Act and with the coming into force of 1988 Act and the rules framed therein, the permit holder was not entitled to any renewal beyond the expiry of the period or the duration of which the renewal made under the repealed Act, except by means of grant to be made on an application for fresh grant under the new Act. The decision in writ appeal No.675 of 1982 was rendered on 28.11.1994 and that of the Supreme Court was 10.8.1994. Further, as rightly pointed out by the learned single Judge, no reason, what so ever, has been stated in those orders of this Court, which directed the authorities to consider the applications filed under the old Act, under the provisions of the new Act. An order passed without reason cannot be regarded as a binding precedent, as the reasons are flesh and blood of judicial order. (see 2002 (10) SCC 87 and 2006 AIR SCW 4891). Further, the 1988 Act came into force from 1.7.1989 and all the orders relied on by the learned Senior Counsel for the petitioner were passed immediately in the year 1990. Hence, those orders cannot be made applicable at this point of time.

11. It is well established legal principle of law that when a statute provides that a particular thing has to be done in a particular manner, the same has to be done in the same manner and any other performance of the same is necessarily forbidden. Even equitable orders or discretionary orders are to be passed only in accordance with the statutory provisions, which proposition of law requires no authority.

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12. The decision of the Division Bench of this Court reported in 2006 Writ Law Reporter 858 (referred supra), with which strong reliance has been made by the learned counsel for the appellant is also not advancing the case of the appellant. That was a case which was rendered with reference to the Tamil Nadu Motor Vehicles (Special Provisions) Act, 1992 (Tamil Nadu Act No.41 of 1992). Taking note of the validation provision contained in that Act, validating all procedures, taken for the grant and all orders passed granting permits or renewal or transfer of such permits or any variation, modification, extension or curtailment of the route or routes specified in a stage carriage permit as if the said Act had been in force at all material times and having regard to the object of enactment of Act 41 of 1992, the Division Bench has observed that any certificate of fitness or registration or licence or permit issued or granted under the old Act could be renewed under the new Act, if they are in force.

13. In the given set of facts in respect of the present case, we are of the view that the observation made by the Division Bench with which reliance has been made by the learned Senior Counsel appearing for the appellant would not in any way furthering the case of the appellant.

14. Reliance has also been made by the learned Senior Counsel for the appellant to Section 217-A of the Motor Vehicles Act to contend that a direction can be issued to consider the renewal application of the appellant under the new Act. The said Section 217-A provides that notwithstanding the repeal of 1939 Act, any certificate of fitness or registration or licence or permit issued or granted under the said enactment may be renewed under the new Act. The Section is very clear in its terms. There is no ambiguity. Section provides for certificate of fitness or registration or licence or permit issued or granted under the 1939 Act could be renewed if the certificate of fitness or registration issued or licence or permit granted under the old Act was in currency when the new Act came into force. The facts of the present case are not suiting or go well with the above provision. Even during the period of January, 1984, the application filed by the petitioner for renewal of his route permit was filed with a delay of 27 days, which was rightly rejected by the authorities concerned, particularly, the appellate authority by giving reason, which was confirmed by the learned single Judge. After the lapse of 27 years, we afraid that we could grant the relief in the absence of any statutory provision.

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15. For the foregoing reasons, we do not find any reason to interfere with the order of the learned single Judge and accordingly the writ appeal is dismissed. However, there is no order as to costs.

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Sd/
Asst.Registrar

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Sub Asst.Registrar

To
1.The Secretary
Regional Transport Authority
Trichy
2.The State Transport Appellate
Tribunal, High Court Buildings
Chennai - 104
3.The Secretary
Home (Transport) Department
State of Tamilnadu
Fort St.George, Chennai - 9.

+ one cc to Mr. S. Gopalakrishnan, Advocate sr no. 46324
+ one cc to the Government Pleader sr no. 46473

VC(CO)
NM(06.08.07)

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